

## Whose Script is it: A Legal Perspective

Copyright protection is required for the written script and screenplay authored by scriptwriters and lyricists. Screenplays or scripts are the blueprint for a movie, television show, digital media etc. The owner of copyright isn't always the one who came up with the concept, but rather the one who puts it into action, such as authoring a book, producing a film, OTT or television show.

Recently, a Bollywood movie produced by Dharma Productions titled '*Jug Jugg Jeeyo*', was faced with a copyright infringement suit (*Vishal Singh v. Dharma Productions Pvt. Ltd. & Ors.*<sup>1</sup>) filed by a Ranchi-based scriptwriter, Vishal Singh before a commercial court in Ranchi, few days prior to its release in theatres on June 24, 2022. The plaintiff alleged that his story '*Bunny Rani*', which he had emailed to Dharma Productions on February 17, 2020 and also registered with the Screenwriters Association was copied by them without authorisation from him. He therefore sought damages of Rs.1.5 crores for copyright violation and an interim order to stay the release of the film. The Ranchi Court by its order dated June 23, 2022 declined to grant ad-interim injunction to stay the release of the movie on the ground that the claim had been filed after seeing the short trailer of the film, basis which it was not possible to reach a conclusion about similarity between the plaintiff's one-page story and the 150 minutes story and picturisation of the movie. Therefore, considering the amount spent by the defendants on the production of the movie and creation of third party rights (in favour of Viacom 18 Media Pvt. Ltd. and others) the Court



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<sup>1</sup> Commercial Suit No. 62/2022

decided that the balance of convenience lies in favour of the defendants and irreparable loss may be caused to them if the release of the movie is injuncted.

Lets examine the applicable law on the subject.

## **WHAT IS SCRIPT COPYRIGHT AND HOW DOES IT WORK?**

A script copyright protects an author's original works, such as scripts and screenplays, and falls under the umbrella of intellectual property rights. This means that a copyright for a script or a screenplay protects the work that has been written. However, it does not protect the broad notion or idea of the subject of conversation, themes, narratives, historical or legend facts. Copyright only exists in the form of a material object into which thoughts are transferred.

## **WHOSE IDEA WAS IT IN THE FIRST PLACE?**

It is critical to remember that the owner of the copyright is not the inventor of the concept (*R.G. Anand v. Deluxe Films*<sup>2</sup>). The individual who gives the concept concrete shape- writes a book, develops a film etc. owns the copyright. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

Even if the concept is unique, there is no guarantee of copyright. Unless he is also the author of the work, the inventor of the bright idea is not the owner of the copyright in the work (*Donogue v. Allied Newspaper*<sup>3</sup>). Copyright will only exist if one is the creator of the work, not only the inventor of that concept, regardless of if the idea is original. As a result, the Screenwriters Association steps in to assist in the registration of the script/lyrics before it is presented to the producers, directors, production house, and so on.

## **WHEN DOES THE SCRIPT PASS INTO THE HANDS OF SOMEONE ELSE?**

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<sup>2</sup> AIR 1978 SC 1613

<sup>3</sup> (1937) 3 Ch. D. 503

- Unless otherwise agreed, the employer is the initial owner of the copyright in a work created during the author's employment under a contract of service or apprenticeship.
- In the case of a written assignment.
- If your script is discovered to be a third-party original work in which you are not the real proprietor.
- If the author notifies the Registrar of Copyrights that he or she wishes to abandon all or any of the rights in the work, or if a new amendment requires a public notice.
- If the copyright in the work has expired, the work is in the public domain, and use by another party does not constitute infringement. The general rule is that copyright is valid for a period of 60 years<sup>4</sup>. In the case of original literary, dramatic, musical, and artistic works, the 60-year period begins the year after the author's death. The 60-year period begins with the date of publication for cinematograph work (films)<sup>5</sup>, sound recordings<sup>6</sup>, photographs<sup>7</sup>, posthumous publications<sup>8</sup>, anonymous and pseudonymous<sup>9</sup> publications, works of government, and works of international organisations.
- If the owner of a copyright dies intestate (without leaving a will), his personal representative or legal heirs inherit it<sup>10</sup>.

## **WHAT IS THE MORAL RIGHT OF THE AUTHOR?**

Although not legally defined, the right to publish, the right to claim authorship, the right to prohibit alteration, and other actions that may hurt the author's reputation are all examples of moral rights. Even after the economic rights have been awarded, the writers have moral rights. The author's moral rights are separate from his copyright and remain with him even after the copyright has been assigned.

## **WHAT PROCEDURES ARE IN PLACE TO SECURE A SCRIPT?**

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<sup>4</sup> Section 22, The Copyright Act, 1957

<sup>5</sup> Section 26, The Copyright Act, 1957

<sup>6</sup> Section 27, The Copyright Act, 1957

<sup>7</sup> Section 25, The Copyright Act, 1957

<sup>8</sup> Section 24, The Copyright Act, 1957

<sup>9</sup> Section 23, The Copyright Act, 1957

<sup>10</sup> Section 20, The Copyright Act, 1957

To protect one's script and stories with copyright, one must first learn how to obtain one. There are copyright websites where you can either purchase copyright yourself or have someone else do it for you. If one has a basic understanding of how to obtain copyright, he or she can do so on their own.

However, if one is unable to copyright their own content and safeguard their stories and scripts against copyright infringement: Go to <https://copyright.gov.in/> for more information.

- Sign up for an account and log in.
- Click on "Click here for Online Copyright Registration" to apply for an application in "e-Filing of Application"

The screenshot displays the user interface of the Copyright Registration portal. At the top, it says "Welcome Ankita Panda (Applicant)" and "User Home Options | Logout". A sidebar on the left lists "Online Services" including e-Filing of Application, Pending Application for Form XIV, Status of the Application, Details of Processing Fee, Check List, Workflow, Upload Discrepancy Reply, Pre-Hearing Documents, Upload Work & Documents, Re-Upload Work By Applicant, Make Repayment, Pending Payment, and Payment History. The main content area is titled "Steps for Online Filing of Copyright Registration Form:" and contains a numbered list of instructions: 1. Click on the link "Click here for online Copyright Registration" provided at the bottom of this page. 2. The online "Copyright Registration Form" is to be filled-up in four steps: I. Complete the Form XIV, then press SAVE button to Save entered details, and press Step 2 to move to the Next Step. II. Fillup the Statement of Particulars, and then press SAVE button to Save entered details, and press Step 3 to move to the Next Step. III. Fillup the Statement of Further particulars. (This form is applicable for "LITERARY, DRAMATIC, MUSICAL, ARTISTIC AND SOFTWARE" works), and then press SAVE button to Save entered details, press Step 4 to move to Step 4. IV. Fillup the Payment Details (presently through DD/Banker's Cheque/E-Payment). 3. After successful submission of the form, Diary Number will be generated. (Please note it for future reference). 4. Please take hard copy(print) of "Acknowledgement Slip" and "Copyright Registration Report", and send it by post to the Office of the Registrar of Copyrights, Department of Industrial Policy & Promotion, Ministry of Commerce and Industry, Boudhik Sampada Bhawan, Plot No. 32, Sector 14, Dwarka, New Delhi-110078. Email Address: copyright@nic.in, Telephone No.: 011-28032496. Below the instructions is a red button with the text "Click here for online Copyright registration". At the bottom of the page, there is a footer with links: Home, Terms & Condition, Hyperlink Policy, Privacy Policy, Disclaimer, Feedback, Contact Us, and Web Information Manager.

- Make payment and wait for the status after completing the e-filing application for the relevant copyright.
- The status will be approved, and you will receive a certificate of registration. Online services can be used to check the status.

## Online Services

- ▶ **e-Filing of Application**
- ▶ **Pending Application for FormXIV**
- ▶ **Status of the Application**
- ▶ **Details of Processing Fee**
- ▶ **Check List**
- ▶ **Workflow**
- ▶ **Upload Discrepancy Reply**
- ▶ **Pre-Hearing Documents**
- ▶ **Upload Work & Documents**
- ▶ **Re-Upload Work By Applicant**
- ▶ **Make Repayment**
- ▶ **Pending Payment**
- ▶ **Payment History**

- Print a copy of both response copies using the Diary Number.
- Send the response copies, along with the acknowledgement slip and the story/script for which you desire copyright, to the address shown below along with the following documents:
  - Two copies of the work if it has not yet been published. A confidential soft copy is maintained in the Registrar's office, while the other is returned. Share three copies of the work if it has been published.
  - Author's No-Objection Certificate and a self-declaration that all information provided is truthful to the author's knowledge.
  - If the work is published, a No-Objection Certificate from the publisher is required.
  - A power of attorney signed by the owner if the application was filed by an attorney.

Please take 1 hard copy (print) of "Acknowledgement Slip" and 1 hard copy (print) of "Copyright Registration Form", and send it by post to

**Copyright Division**  
**Department For Promotion of Industry and Internal Trade**  
**Ministry of Commerce and Industry**  
**Boudhik Sampada Bhawan,**  
**Plot No. 32, Sector 14, Dwarka, New Delhi-110078**  
**Email Address: copyright[at]nic[dot]in**  
**Telephone No.: 011-28032496**

- Continue to check the status of your application using the diary number under 'Status of the Application'.

## **IS IT PRICEY TO REGISTER? OR IS IT OBLIGATORY?**

It is not necessary to register your script or artistic creation. Copyright is automatically acquired when a website is created. The certificate of registration of copyright, on the other hand, provides prima facie evidence in court in case of a dispute over copyright ownership. As a result, registering your work protects your rights and is a preventative measure rather than a legal requirement.

## **THE SCREENWRITERS ASSOCIATION**

The Screenwriters Association was formerly known as the Film Writers' Association. This is a recognised Trade Union for all script writers and lyricists which was founded by screenwriters. Its name was changed to Screenwriters Association (SWA) in 2016. Authors interested in working as scriptwriters can join the SWA to protect their work from piracy. The stated objective of the SWA is to regulate the relationship of its members with producer bodies and other assignees through collective bargaining via Minimum Basic Contracts for film and TV and digital media.

Membership of the SWA is meant for screenwriters who reside in India, including writers and lyricists writing for films, TV, audio formats, digital media or any new media.<sup>11</sup> The

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<sup>11</sup> [SWA Membership \(Revised, 2019\) | SWA – Blog \(swaindia.org\)](#)

Screenwriters Association also registers, through its office & website - the scripts, lyrics, stories written by its members. This service safeguards the copyright of a SWA member.<sup>12</sup>

The SWA lays out a number of principles for young writers to follow, which include<sup>13</sup>:

- Draft a production & reader friendly screenplay which is ready to go into production stage.
- Register all the drafts of synopsis/story/script/screenplay/dialogue, at every stage of rewrite before sharing it professionally.
- Before signing a contract, negotiate the price with the production house.
- Don't write without a contract. Doing so gives no protection - legal, monetary or otherwise.
- Insist on a 'Non-Disclosure Agreement' (NDA) from Producers / Production Houses / Channels for narrations and on recording the meeting.
- Don't plagiarise.
- Don't give away the first draft of the screenplay to Production Houses.
- Email soft-copies of the registered script/work to producers, unless they insist on a hard copy.
- If there exists a clause in the Agreement which prohibits approaching SWA in case of a dispute, refrain from signing it.
- Don't wait for your scheduled payments. If the Producer starts delaying payments, take the help of SWA's Dispute Settlement Sub-Committee (DSC) which is a quasi-legal body set up for the sole purpose of mediation and conciliation between SWA members and producers/employers.

## **WHAT TO DO IF A SCRIPT IS PLAGIARISED?**

If a script or screenplay is proved to be plagiarised, the owner can pursue both civil and criminal remedies.

### Civil remedies:

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<sup>12</sup> [Screenwriters Association \(swaindia.org\)](http://swaindia.org)

<sup>13</sup> Do's and Don'ts for writers, SWA India; <https://www.swaindia.org/do.php>

These are extensively detailed in Sections 52-55 of the Copyright Act, 1957. An owner is entitled to all legal remedies such as injunctions, profit related damages and other legal remedies described below:

- **Interlocutory Injunction:** The most well-known remedy for restraining an infringer is to seek an injunction to prevent the infringer from continuing the offence. The plaintiff may be granted an injunction preventing the defendant from selling or possessing the infringing copies. In most circumstances, if the defendant establishes that he had a good purpose to occupy such copies, the plaintiff may not even be compensated. If no reasonable ground exists, the defendant must compensate the plaintiff for the amount paid in part or in full for the actual losses.
- In the matter of *Gramophone Co. of India Ltd. v. Mars Recording Pvt. Ltd*<sup>14</sup>, the defendant began producing audio cassettes of the Gramophone Company's musical audio after complying with Section 52(1)(j) of the Copyright Act, 1957. In response to a threat that the audio cassettes would be seized by the police, the defendant approached the City Civil Court, Bangalore for a temporary injunction against the plaintiff, which was granted and later affirmed by the High Court of Karnataka. However, the Supreme Court set aside the orders of the Trial Court and High Court on the ground that the true controversy can be decided subsequent to the parties laying the factual foundation in their respective pleadings (not merely basis the plaint) and in absence thereof, to proceed to grant any temporary injunction or to decide the matter would be hazardous. It was also directed that the two suits filed by the parties before the High Court of Calcutta and before the City Civil Court, Bangalore should be tried together and accordingly, the suit pending in the High Court of Calcutta was transferred to the City Civil Court, Bangalore.
- **Anton Pillar Order:** In a certain situation, the Court may issue an ex-parte order directing the defendant to enable the plaintiff and his counsel to visit his premises and take or remove copies for safekeeping. Such directions, however, are given with caution.

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<sup>14</sup> 2001 PTC 681 (SC)



- Profits related damages: Section 55 of the Copyright Act provides for remedies by way of damages and accounts in addition to injunctions. The remedy of injunction can be combined with either damages or accounts, but the remedies of accounts and damages cannot be granted in isolation.

#### Remedy in criminal court:

Chapter XIII of the Copyright Act, 1957 outlines numerous criminal penalties for infringement of the owner's copies. The offence of infringement of copyright or other rights conferred by this Act is defined in Section 63 of the Act, which states that any person who wilfully abets the offence of copyright infringement in a work or in any other right granted by this statute, shall be punished with a term of imprisonment of not less than six months which may extend to three years, depending on the circumstances, as well as a fine of not less than Rs.50,000 but not more than Rs.2,00,000 based on the criminal liability of the offender.

#### **WHAT DOES THE COPYRIGHT (AMENDMENT) ACT 2012 ENVISAGE ?**

The 2012 amendment reinforces the author's rights and specifies that in the case of a future work assignment, the assignment will only take effect when the work is completed. Furthermore, the author of a cinematograph film or sound recording may not delegate the right to obtain royalties in any manner other than as part of the film or sound recording.

The amendment also covers 'other factors' or modalities of payment other than royalty due to the assignor, and the assignment should specify these considerations in such situations. There can be no generic assumptions if all rights are allocated in a clear and specified manner. Regardless of any copyright assignment, the writers shall have a right to claim royalties from the use of such work in the production of a cinematograph or sound recording.

The amendment also declares a copyright assignment void if it conflicts with the terms and conditions of a previous copyright assignment to a Copyright Society in which the work's author is a member.

#### **TO CONCLUDE**

It takes a lot of time, creativity, inspiration and hard work to develop a script or tale. Copyright laws exist to protect an author's efforts in the form of scripts and stories. Copyright protection is important when an infringer tries to exploit a protected author's work for commercial gains without permission. The authors/owners of copyright can resort to civil and criminal remedies to safeguard their rights. The offence of copyright infringement has also been made stringent by the Supreme Court of India by recently pronouncing it as a cognizable and a non-bailable offence in the case of *M/s Knit Pro International v. State of NCT of Delhi*<sup>15</sup>.

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<sup>15</sup> Criminal Appeal No.807 of 2022